

CHAPTER 85

CONTRACTING POLICIES AND PROCEDURES

Authority

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SUBCHAPTER 1. GENERAL PROVISIONS

16:85-1.1 Purpose

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as an instrumentality of the State to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the ways by which NJ TRANSIT fulfills this responsibility is by reviewing opportunities to contract out its regular route bus services. In April 1986, the NJ TRANSIT Board of Directors adopted a contracting out policy to govern how the existing bus services provided by NJ TRANSIT might be contracted in an effort to reduce the cost of providing such

services. Since 1986, NJ TRANSIT has awarded numerous contracts for the provision of regular route service to private bus carriers or its wholly owned subsidiary, NJ TRANSIT Bus Operations, in accordance with the procedures set forth in these rules. On March 31, 1993, the Superior Court of New Jersey, Appellate Division ruled in *Academy Bus Tours, Inc. v. New Jersey Transit Corporation*, Docket No. A-2195-90T3, that NJ TRANSIT should have adopted its contracting out policy in accordance with the Administrative Procedure Act. These rules are intended to comply with this ruling and to govern whenever NJ TRANSIT seeks proposals for the provisions of regular route bus services, and these rules shall constitute NJ Transit's Board's policy statement and rule concerning the Contracting Out Program.

16:85-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings.

"Board" means the Board of Directors of NJ TRANSIT.

"Carrier" means any person, firm, corporation or any type of entity which proposes to provide regular route bus service for NJ TRANSIT.

"Executive Director" means the Executive Director of NJ TRANSIT or his or her designee.

"NJ TRANSIT" means the New Jersey Transit Corporation.

"NJT Bus" means NJ Transit Bus Operations, Inc., the wholly owned bus operating division of NJ TRANSIT.

"Destructive competition" means the violation of territorial integrity that results in the worsening of the financial condition of the current operator.

"Direct costs" means costs that vary with the amount of service provided and therefore are directly attributable to the provision of the service (for example, drivers' and mechanics' wages, tolls, fees, fuel, parts and insurance).

"Fixed costs" means expenses that tend to remain constant in amount regardless of variations in volume of activity within a relevant range.

"Marginal cost" means the incremental cost, also known as avoidable cost, and not the fully allocated cost, as dictated by concepts of financial cost accounting and as deemed appropriate to mass transit activities by NJ TRANSIT.

"Marginal or avoidable cost analysis" means that in evaluating the exact cost of operating a service (or exact savings to be obtained from not operating a service), the "direct costs" must be utilized. In addition, "semi-variable costs"

may be utilized in the exact cost calculation but only if the semi-variable costs result in additional costs or in cost savings. If no costs or savings are to be incurred in the "semi-variable cost" area, such costs should not be included in the analysis as they do not directly relate to the cost of the service.

"Regular route bus services" means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states. For purposes of this chapter, "regular route bus service" also refers to bus routes to which NJ TRANSIT is authorized by law to possess or which NJ TRANSIT actually operates or could operate via NJT Bus Operations pursuant to law.

"Semi-variable" means that portion of fixed costs that can be avoided by not running the service (for example garage costs, management and supervisory costs, finance and data services costs, labor relations/personnel costs, procurement and engineering costs).

SUBCHAPTER 2. CRITERIA FOR CONTRACTING OF BUS SERVICE

16:85-2.1 Introduction

(a) Carriers have no right or entitlement of any kind to the receipt of any contract for any service pursuant to this chapter and the award of such regular route bus service contracts shall always be at the discretion of NJ TRANSIT acting in the exercise of its business judgment and pursuant to N.J.S.A. 27:25-6(b).

(b) NJ TRANSIT is not required to contract for any portion of its regular route bus service. However, from time to time as it may deem proper, NJ TRANSIT may offer for contracting one or more of its regular route bus services. NJ TRANSIT's determination as to which specific routes may be offered for contracting shall be based on NJ TRANSIT's review regarding which services will serve the State's best interests by being operated through a contract for service.

16:85-2.2 Financial criteria

(a) In determining whether or not to award a contract for regular route bus service, NJ TRANSIT first shall determine whether such an award substantially improves the financial position of the State. NJ TRANSIT shall do this by establishing a benchmark cost figure against which proposed costs shall be compared. Since the true measurement of cost must be predicated on the basis of net actual cost increase or cost savings to NJ TRANSIT the marginal cost of operating the service, under consideration for contracting, by NJ TRANSIT shall be used to determine the benchmark.

(b) The benchmark cost figure shall include, but not be limited to, the following types of costs: operators labor, mechanics labor, cleaners labor, fringe benefits, fuel and lubricants, rentals, insurance, toll and departure fees, commissions, and other direct costs.

(c) Proposals from private bus carriers that meet the Technical Qualifications at N.J.A.C. 16:85-3.8 and offer to provide the regular route bus service at a cost less than the established benchmark, subject to (a) above and (d) below, shall be deemed to improve the State's financial position. NJ TRANSIT shall determine whether such improvements in its financial position are substantial.

(d) Additional factors which shall be included in NJ TRANSIT's assessment of proposed costs shall include, but are not limited to:

1. Lost opportunities to use part-time labor on other NJ TRANSIT routes;
2. All costs related to labor protection (unless the carrier agrees to assume such cost); and
3. Any additional cost which may be incurred, including monitoring and administrative costs such as revenue collection equipment and services associated with the contract.

16:85-2.3 Non-financial considerations

(a) In determining whether to contract out regular route bus services, NJ TRANSIT shall also consider the following non-financial factors:

1. The impact on the provision of regular route bus services in the most effective, efficient, coordinated, safe and responsive manner;
2. The need to encourage to the maximum extent feasible the participation of private enterprise;
3. Whether a carrier or its affiliates are current in its accounts with NJ TRANSIT or any other agency of the State of New Jersey;
4. The adequacy of performance by a carrier or its affiliates under prior leasing or other contractual arrangements with NJ TRANSIT;
5. Whether a carrier has the ability to maintain and operate the equipment associated with the service; and
6. Any other factor which NJ TRANSIT deems relevant to a particular proposal and in the public interest.

SUBCHAPTER 3. REQUESTS FOR PROPOSALS (RFP)

16:85-3.1 Solicitation for proposals

Proposals for the provision of regular route bus services shall be solicited by NJ TRANSIT in a manner which encourages, to the extent feasible, private carrier participation, unless it is otherwise deemed appropriate by NJ TRANSIT to utilize, on a case by case basis, a different method of solicitation due to the special needs and requirements of NJ TRANSIT.

16:85-3.2 Proposers' qualifications

Proposals from private carriers that, at the time of the proposal, are in violation of any agreement with NJ TRANSIT, disbarred and/or in destructive competition with NJ TRANSIT, shall not be considered.

16:85-3.3 Form and procedure for proposal

(a) Where NJ TRANSIT uses requests for proposals (RFPs) to seek proposals, the RFP shall identify and contain, but not be limited to, the following:

1. Standards of service;
2. Standards of equipment and facility maintenance;
3. Audit and inspections;
4. Revenue system and collection process;
5. Reporting requirements; and
6. Proposal format and evaluation process.

(b) The proposal format shall consist of two sections:

1. Technical qualification; and
2. Cost qualification.

(c) Both proposed sections must be separately sealed and delivered to NJ TRANSIT no later than the deadline specified in the RFP. Proposals must comply with all the terms and conditions of the solicitation or may be rejected as non-responsive. Persons or entities who wish to receive an RFP from NJ TRANSIT must file a written request to be provided with a specific RFP. A request for one RFP shall not be regarded as a continuing request for future RFPs.

16:85-3.4 Amendment of request for proposals

(a) If after the issuance of an RFP, but before the time of opening of the proposals, NJ TRANSIT deems it necessary to make changes in scope, closing dates, or any other part of the RFP or to correct a defective or ambiguous RFP, such changes shall be accomplished by the issuance of an amendment to the RFP or the RFP may be cancelled if deemed appropriate by NJ TRANSIT. The amendment or notice of cancellation shall be sent to those parties who have indicated in writing an interest to be supplied with the specific RFP in accordance with N.J.A.C. 16:85-3.10.

(b) Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP if such information is deemed by NJ TRANSIT to be necessary to the proposers in submitting proposals or if the lack of such information would be prejudicial to uninformed proposers.

16:85-3.5 Cancellation of requests before opening

Where an RFP is cancelled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued. The notice of cancellation shall identify the RFP and briefly explain the reason the RFP is being cancelled.

16:85-3.6 Receipt and safeguarding of proposals

(a) All proposals received prior to the time of opening shall be kept secure, and except as provided in (b) below, unopened. If an RFP is cancelled, or if a proposer withdraws its proposals, all proposals, or the withdrawn proposal, as the case may be, shall be returned.

(b) Unidentified proposals may be opened solely for the purpose of identification and then immediately resealed. A record of this event shall be kept in the RFP file.

(c) All proposals received prior to or at the time designated in the RFP, for formal receipt, shall be distributed for review by designated NJ TRANSIT employees.

16:85-3.7 Late submittals

Proposals not received prior to or at the time designated in the RFP for formal receipt shall not be considered. Late proposals shall be returned to the proposer unopened.

16:85-3.8 Evaluation of proposals

Based on a technical qualification evaluation, proposers' experience and ability to provide the service shall be scored. Proposers must obtain a minimum score as determined by NJ TRANSIT on the technical qualification evaluation before their cost proposal section may be considered. The cost proposals of proposers not achieving the minimum technical qualification score will not be opened or considered. The above indicated criteria shall be outlined on a case-by-case basis in each specific RFP.

16:85-3.9 Negotiations

Negotiations may be conducted by NJ TRANSIT with any proposers whose proposals are considered by NJ TRANSIT to be in the best interests of the State.

16:85-3.10 Cancellation, withdrawal and rejection of proposals

(a) Requests for proposals may be cancelled and withdrawn at any time before and after opening but prior to award and all proposals rejected, where NJ TRANSIT determines in writing that:

1. Inadequate or ambiguous specifications were given in the RFP;
2. The services being contracted are no longer required;

3. The RFP did not provide for consideration of all factors of cost to NJ TRANSIT;

4. All otherwise acceptable proposals received were at unreasonable prices as determined by the criteria established for a specific RFP;

5. Proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

6. For other reasons, cancellation is in the best interest of NJ TRANSIT.

16:85-3.11 Rejection of individual proposals

(a) Any proposal which materially fails to conform to the requirements of the criteria of a specific RFP shall be rejected.

(b) Proposals received from carriers determined by NJ TRANSIT to be not responsible shall be rejected.

(c) Those carriers whose proposals are rejected will be notified pursuant to N.J.A.C. 16:85-3.10.

16:85-3.12 Debriefing

Upon written request, unsuccessful proposers shall be informed in general terms, through a face to face debriefing, only of reasons for non-acceptance of their proposals without disclosing other offerors' proprietary data or NJ TRANSIT confidential information. NJ TRANSIT shall establish within an RFP, specific time limits to request a debriefing in anticipation of a dispute.

16:85-3.13 Dispute resolution

NJ TRANSIT is an entity of the State of New Jersey. As such, disputes between other parties and NJ TRANSIT are guided by R.2:2-3(a)(2) of the Rules governing the Courts of the State of New Jersey and applicable law thereunder. However, NJ TRANSIT may utilize as part of its RFP process a dispute resolution procedure. Such procedure may be used to resolve disputes arising out of NJ TRANSIT's decisions involving the contracting for bus service prior to NJ TRANSIT's Board of Directors award of a bus service contract. Any such procedure is not designed to confer any right on a carrier to obtain a hearing under New Jersey's Administrative Procedure Act. Upon the Board of Directors' award of a bus service contract, any unsuccessful proposer may seek judicial review of the final agency action of NJ TRANSIT by filing the appropriate appeal with the Superior Court of New Jersey, Appellate Division as provided by R.2:2-3(a)(2).

16:85-3.14 Award

Unless all proposals are rejected, award shall be made to that proposer whose proposal, conforming to the Request for Proposals, will be most advantageous to the State as so determined by NJ TRANSIT.